

## The environmental implications of the UK's draft legal texts for the future relationship

June 2020

With the climate and nature crisis posing ever greater challenges, the UK and EU need to agree a future relationship that enhances work to protect the environment.

On 19 May, the UK government published a number of draft legal texts that set out its desired future relationship with the EU. These envisage a set of separate agreements and included a draft [Comprehensive Free Trade Agreement](#) (CFTA), an [Energy Agreement](#), and a [Fisheries Framework Agreement](#).

As with other major Brexit documents, we have judged these proposals against the set of Greener UK [Green Benchmarks](#). These are:

1. **Higher environmental standards** in all four countries of the UK, consistent with the devolution settlements, with proper resourcing, and no potential for backsliding.
2. **Effective systems of enforcement** of environmental law, fulfilling people's rights to environmental information, public participation, access to justice and substantive remedies.
3. **Mechanisms for effective co-operation** on the environment and environmental policy, including energy and climate change, both with the EU and within the UK.
4. **Trade policy that promotes high environmental standards**, minimises the UK's global environmental footprint and is responsive to engagement by civil society.

### Verdict

Considering the UK's draft legal texts against the benchmarks, our conclusion is that their overall risk to the environment is **high**.

### Analysis

#### Environmental Standards

The UK's draft CFTA text does not commit to non-regression on environmental standards, although a specific mechanism is included in the Energy Agreement to ensure non-regression of legislation covering energy trading.

While the CFTA includes language guarding against the weakening of regulations specifically to "*encourage trade or... investment*" and proposes that neither party should fail to enforce environmental law "*through a sustained or recurring course of action or inaction*", these provisions are outside the agreement's dispute settlement mechanism and therefore unenforceable (see below). References to 'international standards' and 'science based regulation' in the Technical Barriers to Trade and Sanitary and Phytosanitary Measures chapters are concerning as the latter suggests a move to US style regulation and international standards are usually lower than current UK ones.

To tackle the environmental crisis, an enforceable non-regression mechanism that is broadly applicable in terms of subject matter and motivation for regression should be a

basic prerequisite of all FTAs. This would prevent both the EU and the UK from weakening standards.

## HIGH RISK

### **Dispute settlement and enforcement**

Some parts of the UK's draft negotiating text would be subject to a general dispute settlement procedure, where matters can end up before a powerful 'panel of arbitrators'. The arbitrators can issue a final report that compels a party in breach to take "*any measure necessary to comply promptly*", and order a payment of compensation or alternative arrangement including a temporary suspension of the agreement's provisions if adequate measures are not taken.

The environmental provisions, however, are outside the scope of this procedure and covered only by a weak consultation mechanism and option to refer matters to a 'panel of experts'. Here, parties are required to discuss any report issued by the panel, and encouraged to identify a measure or plan to remedy the issue – but crucially the panel's report is not binding. Similarly, a Committee on Trade and Sustainable Development is tasked with monitoring the follow-up to a panel's report but there is no actual enforcement of the panel's findings.

Overall this proposed approach for dealing with potential non-compliance with the agreement's environmental provisions is seriously inadequate.

## HIGH RISK

### **Co-operative mechanisms**

Mirroring public pronouncements on standards and regulations, the UK's draft text accords primacy to each party's right to regulate. Co-operation is seen as a method of minimising barriers rather than a route to agreeing higher standards, while the chapter on 'good regulatory practices and regulatory cooperation' includes no requirements to consider the environmental impact of regulatory changes.

Given the UK and EU's proximity and shared environmental interests, this is a missed opportunity to establish a future relationship based on close environmental co-operation. For example, the UK should seek continued membership of the European Environment Agency, which is an important vehicle for environmental monitoring and scientific collaboration across 39 countries.

## MEDIUM RISK

### **Climate change**

Climate change is almost entirely absent from the proposed CFTA. There is a single reference in relation to the UK and EU retaining their right to regulate in services and investment provisions (Article 8.1.3), and two footnotes noting the proposed separate Energy Agreement. This is deeply troubling and suggests that the UK only considers climate change in the context of energy, effectively ignoring its role in transport, industry, agriculture and the environment.

It will require action across all aspects of our supply chains if the UK is to achieve net zero emissions before 2050. All UK FTAs should contain a comprehensive chapter on climate

change that addresses the full scope of related goods and services, and include a direct reference to implementation of the Paris Agreement.

## HIGH RISK

### Civil society engagement

It is proposed that civil society organisations will feed into consultative mechanisms, both domestically and through annual joint 'civil society forum' sessions on the agreement's sustainable development aspects. A Committee on Trade and Sustainable Development is tasked with overseeing the implementation of the trade and environment chapter, and will engage with the civil society forum.

While the committee will be expected to present the views of the forum to the parties directly, there is no requirement for them to implement, respond to or even consider its opinions or recommendations. There are no assurances about the forum being adequately resourced. In addition, the committee procedures do not ensure adequate transparency. Overall, these procedures do not give the public and civil society meaningful opportunities for engagement.

## HIGH RISK

### Energy Agreement

The proposed Energy Agreement contains strong provisions to support cooperation on climate issues related specifically to energy. It proposes arrangements for the efficient trading of energy across interconnectors (Section 2 Article 8 and Section 4 Article 14), maximising the potential of the UK's renewable resources and reducing the costs of decarbonisation. The proposal sets out measures to link a new UK emissions trading scheme with the current EU Emissions Trading scheme, though further detail is needed to ensure there will be a consistent carbon price going forward (Chapter 4 Carbon Pricing). There is also a clear reference to the implementation of the Paris Agreement in the general provisions (Article 2 paragraphs 1 & 2).

The governance of the Energy Agreement will be managed by a new 'energy cooperation group' to which the UK and EU would appoint representatives (Chapter 5 Article 23). The group would manage an agreed list of legislation (Annex 3) which each side would need to retain in order to facilitate energy trading, which can be updated over time by mutual consent. This provides a targeted version of non-regression.

The proposal would allow the UK to participate in technical bodies, including the European Network of Transmission System Operators and the Agency for the Cooperation of Energy Regulators. This would enable the UK to have a continued voice over technical standards and regulation for energy interconnection.

## LOW RISK

### Chemicals

An objective of [Annex 5-E](#) to the draft CFTA is "*the sharing of information on chemicals*". It is not clear whether the UK wants to access the European Chemicals Agency's chemical safety database under Article 120 of the EU's REACH Regulation. This would be a positive move as without access to this data, a future UK chemicals regulator will have to depend

on more limited information – making it harder to implement controls on chemicals and to defend them from court challenges. However, it is likely that one of the EU's pre-conditions for such data sharing is alignment with its decisions on chemicals. Article 3.2 of the annex instead asserts the ability of each party to set *"its own priorities on chemicals regulation"*.

Article 8.5 proposes an arrangement that could be triggered by either party to oblige the other to try to find *"common understanding"* on scientific information and data related to hazards and risks. This clause does not require agreement on a common approach, but is likely to raise EU concerns that such a process could disrupt or delay regulation. The annex also promotes cooperation around international standards that do not provide the same level of protection as REACH – specifically the Globally Harmonized System of Classification and Labelling of Chemicals, which sets out an approach to classification and labelling of the properties of a chemical and not to the controls on its use.

As REACH is the international gold-standard for chemicals regulation, continued alignment with its restrictions and authorisations would best serve the UK environment.

## HIGH RISK

### Fisheries

While the UK's draft Fisheries Framework Agreement proposes annual negotiations to determine terms of access and the share and amount of fishing opportunities, it does not require these to be set at scientifically recommended levels and there are no firm commitments on the sustainable management of shared stocks. There is no requirement to fish sustainably if an agreement is not reached, risking more 'mackerel wars' where each state sets its own unsustainable limits.

The draft text states that the amount of fishing opportunities should *"take into account the best scientific evidence available to the Parties, the ICES-recommended TAC, the interdependence of stocks, the work of appropriate international organisations, socio-economic aspects and other relevant factors"*. A requirement to merely *"take into account"* the best scientific evidence and the inclusion of socio-economic aspects and *"other relevant factors"* in the determination of fishing opportunities could be detrimental to the sustainability of fish stocks and regresses from the UK's negotiating objectives published in February 2020, which stated simply that opportunities should be negotiated *"on the best available science for shared stocks provided by ICES"*.

The UK wants the parties to agree to share vessel monitoring information to prevent illegal and unregulated fishing, and is calling for a 'fisheries co-operation forum' to discuss sustainable fisheries management. While this is welcome, more clarity is needed on the forum's composition, authority and overall role, including whether civil society will play a part.

The UK wants both parties to be able to suspend the agreement if a dispute arises, or if either of the parties fails to comply with its provisions. The inclusion of a dispute resolution mechanism is welcome, but the prospect of not reaching an agreement could lead to overfishing.

## HIGH RISK

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## GREENER UK

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